



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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December 16, 2022

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl St.  
New York, NY 10007

Re: *Bird et al. v. Banks et al.* 22-cv-8049(JGK)

Your Honor:

I am an Assistant Corporation Counsel in the office of the Corporation Counsel assigned to represent Defendants David C Banks and the New York City Department of Education in the above referenced matter. I am submitting this letter on behalf of all parties. On December 1, 2022 Your Honor issued an order directing the parties to file a Rule 26(f) report by December 16, 2022. However, the parties are in agreement that no discovery will be necessary in this matter.

It is also respectfully submitted that, because the inquiry here is not whether there are disputed issues of fact, the Rule 56.1 statements should be waived. While in IDEA actions "the parties and the court typically style the decision as a ruling on a motion for summary judgement, [] 'the procedure is in substance an appeal from an administrative determination, not a summary judgement motion.'" *Bd. Of Educ. v. C.S.*, 990 F.3d 156,165 (2d Cir. 2021)(quoting *M.H. v. N.Y.C. Dep't of Educ.*, 685 F.3d 217,226 (2d Cir. 2012). Because the Parties' motions will be based solely on the administrative record, the parties jointly, and respectfully, request that the Court waive the submission of 56.1 statements.

Sincerely yours,

/s/ Marilyn Richter  
Marilyn Richter  
Assistant Corporation Counsel

The 56.1 requirement is  
waived. The pre-motion  
requirement is waived.  
The parties should submit  
a proposed schedule for the  
summary judgment motion.  
I order accordingly 12/16/22

USDJ  
12/16/22